

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 541 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

PATEL ISWARBHAI RANCHHODBHAI

Versus

STATE OF GUJARAT

Appearance:

MR ASIT PANDYA AND MR VH PATEL, for Petitioners
MR AJ DESAI, APP, for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.L.DAVE

Date of decision: 15/09/98

ORAL JUDGEMENT (Per A.L. Dave, J.)

1. The present appeal challenges the judgment and order of learned Additional Sessions Judge, Mehsana, passed by him on 6th June, 1992, in Sessions Case No.159 of 1990. The present appellants were charged to have committed murder of one Mahendra alias Maheshbhai Jayantibhai Patel of Viramgam. The learned Additional

Sessions Judge, after considering the evidence on record, passed the impugned judgment and order convicting the accused persons for the said offence. Being aggrieved by the said judgment and order, the original accused persons have preferred this appeal.

2. FACTS

2.1 A dead body was noticed on 24th May, 1990 by Dalabhai Lavjibhai in the outskirts of village Karoda under a bridge. He, therefore, informed the Sarpanch of Karoda Gram Panchayat, Somaji Pratapji Thakore. He visited the place, saw the dead body and, ultimately, lodged a First Information Report with the police. The dead body was not identified by any person then. The police, therefore, took some photographs of the dead body and drew inquest Panchnama besides the Panchnama of the place of offence. Two photographs of the deceased himself and two photographs of deity were recovered from the pocket of the dead body. One of the photographs carried rubber stamp impression and letters "VIR" were noticeable. The Investigating Officer, therefore, had assumed that the deceased may be belonging to Viramgam town and started investigation in that township. On the rear side of the other photographs, there was a writing "Ishwar R.". That also was investigated upon by the police. Since the dead body was not identified and it could not have been preserved for long, the Investigating Officer handed it over to the Sarpanch of the village Panchayat for performance of obsequial ceremony. During the course of investigation at Viramgam, it was found that the photograph was of Mahendra alias Mahesh Jayantibhai Patel, who was engaged in hosiery business, was aged about 30 years, was married and had two daughters. It was unearthed during the course of investigation that deceased-Mahendra had an affair with Pushpa, daughter of Govindbhai alias Babubhai Manjibhai, who is appellant No.2 herein. It was gathered that Govindbhai had brought his daughter to Viramgam to pursue higher education after she passed examination of 10th standard and they were staying near the house of deceased-Mahendra. Somehow, deceased-Mahendra and Pushpa got entangled with each other emotionally, which was not liked and approved by accused No.2. Ultimately, according to the prosecution, all three accused persons collectively decided to do away with deceased-Mahendra. They, therefore, took him with them on a tour to Nasik, etc. and, thereafter, he was not to be seen till his dead body came to be found by Dalabhai Lavjibhai.

2.2 After considering the evidence adduced by the

prosecution, the learned Trial Judge came to a conclusion that, although there is no direct evidence to connect the accused persons with murder of Mahendra, the circumstantial evidence establishes an unbroken chain of circumstances to connect the accused persons with the murder of deceased Mahendra and, ultimately, convicted the accused persons for murder of deceased-Mahendra under Section 302 read with Section 34 of Indian Penal Code, so also under Section 120-B of Indian Penal Code and sentenced all of them to undergo life imprisonment, which has given rise to this appeal.

3. We have heard Mr. Asit Pandya and Mr. V.H. Patel for the appellants and Mr. A.J. Desai, learned Additional Public Prosecutor for the respondent-State. We have been taken through the relevant portion of the evidence on record by both the sides.

4. It has been argued on behalf of the appellants that the learned Trial Judge has committed an error of law and fact both. The circumstances which are considered as sufficient to form a complete chain to connect the accused persons on one end and the crime at the other is, in fact, not a complete chain of circumstances. The evidence that is relied upon does not inspire any confidence particularly when there is total lack of direct evidence. Our attention was drawn to the fact that, as per the prosecution case, accused No.1 had stayed at Nasik/Trambekeshwar under a different name. The Manager of the Inn has stated that three accused persons were in company of the deceased which he does after looking at the photographs of the dead body shown to him. That was on 15th May, 1990. The dead body was found on 24th May, 1990 and the death had occurred about 24 hours prior to the performance of postmortem, which was done on 24th May, 1990, in the afternoon. There is no evidence to show as to what happened between these two dates. On the contrary, the evidence of Bharat, Ex.11, brother of the deceased, if perused, indicates that the deceased had last visited his sister-Kusumben, at Ahmedabad and it is not on evidence that at that time, he was in company of the accused. There is no evidence as to where he went therefrom, till his dead body was found on 24th May, 1990. It was also urged on behalf of the appellants that no blood stains on the cloth of any of the accused is found. The weapons alleged to have been used for commission of the offence, namely, a knife and a pen knife, were not found to be carrying any blood stains. The razor carried blood stains of group "B", but that by itself cannot be considered as sufficient piece of evidence to connect the accused with the offence.

Mere discovery of weapon by accused No.2 cannot connect him or the other accused persons with the crime particularly when other necessary circumstances to link the accused persons with the offence are missing. It was urged, therefore, that the decision arrived at by the learned Trial Judge is erroneous and may, therefore, be quashed and set aside allowing the appeal.

5. Mr. A.J. Desai, learned Additional Public Prosecutor tried to support the judgment with full vehemence. He submitted that there is evidence to show that there was an affair going on between deceased-Mahendra and Pushpa, daughter of accused No.2. There is evidence to show that accused No.2 had to vacate his house and shift to other place to bring an end to this relationship. There are witnesses to show before whom deceased had admitted of him having an affair with Pushpa and him intending to marry her. Razor is discovered by accused No.2. Knife and pen knife are discovered by accused Nos.3 and 1 respectively. The Investigating Officer has gathered sufficient material to establish that the deceased was seen last in company of the accused persons. The accused persons have discovered the place where they have destroyed the cloth of the deceased. All these aspects are sufficient to form a chain to connect the accused persons with the offence. Mr. Desai, therefore, urged that the decision arrived at by the learned Trial Judge is just, legal and proper, and there is no need for any interference at this stage.

6. We have gone through the record and proceedings of the matter. We have closely scrutinized the oral as well as documentary evidence adduced by the prosecution. While going through the evidence, we find that, in the entire evidence led by the prosecution, there is no direct piece of evidence to connect the accused with the offence. The prosecution case is that the deceased was last seen in company of the present accused persons. On this count, there is evidence of Manager at Tambekeshwar-Ullas Datatay. He has been examined at Ex.45. He says that three Gujarati speaking visitors had come on 14th May, 1990 in the Shivlin Inn, which he manages. But he is not able to identify those three persons. Likewise, witness Trambak Krushnaji Patil, Ex.42, who is the Manager of Shivneri Inn, says that on 10th May, 1990, three pilgrims had come to the said Inn. He says that the entry was made and signed in the name of Ashok R. Patel. But he is also not in a position to identify those pilgrims or visitors and as such, there is no evidence to indicate that the deceased and the accused persons had visited Nasik and Trambekeshwar, as the

Investigation Officer claims to have discovered during the course of investigation. On the contrary, deposition of these two witnesses indicates that there were three visitors in all. If the deceased had accompanied, the number of visitors would have been four and not three.

7. Another aspect that the prosecution banks upon is the signature in the register of the above two Inns purported to have been signed in the name of Ashok R. Patel by accused-Ishwarbhai Ranchhodbhai Patel. Those signatures and undisputed signatures have been sent to hand writing expert, who in turn has opined that the writings are of the same person. That opinion is at Ex.87. It is, therefore, urged that this piece of evidence establishes the nexus. However, as discussed earlier, the visit of the accused persons with the deceased is not established as the managers have not been able to identify those visitors as the accused persons. Secondly, merely because these writings are the same, it cannot be inferred that the accused persons have committed the murder when there is no evidence to indicate that the deceased was in company of the accused, at that point of time.

8. It further transpires from the evidence which is, in our opinion, fatal to the prosecution case that the three visitors who visited the Inn at Trambekeshwar had visited the said Inn on 15th May, 1990. Where they went thereafter is not brought on record. The dead body of the deceased was found on 24th May, 1990, i.e. after about 9 days. It, therefore, cannot be said that the deceased was last seen in company of the accused persons in recent past. Being in company long back before the detection of the dead body cannot necessarily lead to an inference against the accused persons. According to the medical evidence, the death must have occurred about 24 hours prior to the performance of postmortem, which was performed between 15.15 and 17.00 hours on 24th May, 1990. That would bring the time of death around 3.00 P.M. on 23rd May, 1990. So what transpired between 15.5.1990 and 23.5.1990 nobody knows, assuming for the moment, that the deceased was in company of the accused persons at Trambekeshwar, Nasik in Maharashtra. Against this is the evidence of Bharat, Ex.11, who in his deposition states in paragraph 8 that, after missing of his brother, deceased-Mahendra, they commenced search for him. They had been to Ahmedabad and went to the house of Kusumben, his sister. He says that he learnt that four days prior to the police recording his statement, deceased had been to the house of Kusumben and stayed there for 2-4 days with Kusumben and, thereafter, nobody

knows where he went. Now, the police came to know about the offence on 24th May, 1990. They recorded the statement of Bharat on 25th May, 1990. Now, if we calculate backwards, the deceased went to the house of Kusumben four days prior to 25th May, 1990, that would be approximately 20th or 21st May, 1990. The deceased stayed with Kusumben for 2-4 days. That brings us to 23rd or 24th May, 1990 around which the deceased appears to have been done to death. It has not come on record that the deceased was in company of any of the accused while he was with Kusumben. Kusumben is not examined. There is no evidence to show as to where the deceased went after he left the house of Kusumben. Under the circumstances, the deceased cannot be said to have been last seen in company of the accused persons because after he left Trambekeshwar on 15th May, 1990, he went to the house of his own sister and stayed with her for 2-4 days and the principle of last seen together, therefore, cannot be applied against the accused persons in the present case. This aspect is overlooked by the learned Additional Sessions Judge. This, therefore, leads us to a conclusion that the prosecution has failed to establish an unbroken chain of circumstances to connect the accused at the one end and the offence at the other.

9. Though not of much importance, in the deposition of witness-Pravin Shivilal Mochi, Ex.15, who was an employee of the deceased, he says that the deceased was to go on a tour to Delhi and he had gone to drop the deceased at Viramgam railway station on his bicycle. This witness does not speak of any of the accused having accompanied the deceased when he last left his residence. This piece of evidence also raises a doubt as to whether really the deceased went to Nasik-Trambek as is the prosecution case or he went to Delhi as this witness has deposed.

10. These aspects having been considered, mere discovery of weapon by the accused persons or the so called discovery of the place where the cloth of the deceased were destroyed cannot be of any significance. The knife and the pen knife discovered by accused No.3 and 1 respectively did not bear any blood mark. The razor did carry blood stains of group "B". But that piece of evidence is not sufficient enough to draw an inference as to complicity of the accused.

11. The learned Trial Judge was, therefore, in our opinion, in apparent error in holding that the circumstantial evidence formed an unbroken chain of

circumstances to establish the guilt of the accused. In fact, the basic proof of identity of the persons being the accused persons who were in company of the deceased and being last in company of the deceased has not been established by the prosecution to the hilt and, therefore, the prosecution could not have succeeded and, in our view, therefore, the appeal merits allowance.

12. In the result, the appeal is allowed. The judgment and order recording conviction of the appellants for the offence under Section 302 read with Section 34 of the Indian Penal Code in Sessions Case No.159 of 1990 passed by the learned Additional Sessions Judge, Mehsana on 6th June, 1992 is hereby set aside. The appellants are acquitted of the offences with which they are charged and are ordered to be released forthwith, if not required in any other case.

[J.N.BHATT, J.]

[A.L DAVE, J.]

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